

**R E M A R K S**

Applicant wishes to thank the Examiner for the interview on Thursday, December 16, 2004. A draft Amendment after Final was sent on Wednesday, December 15 to serve as basis of discussion for the interview. Applicant, as evidenced by the cover sheet to that transmittal, did not intend same to be an Amendment after Final that was to be entered.

An Office Action was mailed on September 27, 2004. Claims 1-11 are pending, of which claims 1 and 9 are independent claims.

By the foregoing, claims 1, 5, 9, and 10 are amended. Claim 1 is amended to remove cross-phasing for at least the purpose of focusing on the inventive thrust of compensating copyright owners.

Claims 1, 5, and 9-11 are amended for at least consistent usage of the definite article or other consistent usage. The preambles of claim 1 and 9 are amended to correct improper usage and to make it more readable. No change in scope is thereby made.

Claims 1-7 and 9-11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,253,193 to Ginter et al. in view of U.S. Patent 6,385,596 to Wiser and in further view of U.S. Patent 6,345,100 to Levine. Claim 8 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Ginter in view of Wiser and in further view of Levine as well as in further view of BMI reference "What is a Cue Sheet?".

The present invention is directed to ensuring that copyright owners of audio works that are publicly performed via a broadcast over, but not limited to, radio or television to a plurality of audience members are properly compensated for their efforts. Under license agreements, songwriters, composers, lyricists and music publishers are legally entitled to receive royalty payments available to copyright owners. For a variety of reasons, including willful omission, compliance with such agreements is woefully inadequate. The present invention has been used successfully to increase efficiency by as much as 70%, as proven in actual usage.

As now claimed by all independent claims, an encoded digital audio recording (claim 1) or an audio recording (claim 9) is broadcast by a radio, television, cable, or satellite network or internet website. Furthermore, as is now claimed, the broadcast is remotely receivable simultaneously by a plurality of audience members. Neither Ginter, Wiser, Levine nor a combination of the three reasonably discloses, teaches or suggests such a remote available broadcast made to a plurality audience members for the purpose of compensating an artist responsible for content is performed.

In contrast to the present invention, Ginter and Wiser are directed to music distribution systems. Ginter discloses a virtual distribution environment for providing a secure means of transaction management and electronic rights protection. Therein, Ginter discloses that the content can only be watched or copied when the consumer is authorized to do so under "Rules and Controls." Col. 53, lines 53-64. Ginter further discloses that the "Rules and Controls" prevent use of information in the virtual distribution environment. Col. 56, line 24 et al.; col. 56, line 17 et al. ("rules and controls" prevent content from being accessed); col. 58, line 38 et al. (information cannot be accessed except as provided by "rules and controls").

What Ginter discloses is generically known as digital rights management, and requires that appliances that access information protected by such a scheme be able to decode the "rules and controls" so that the information may be accessed for an authorized user or denied to an unauthorized user. The present invention in stark contrast to Ginter is unconcerned with distribution components that limit access to audience members, but rather the monitoring of works that are broadcast by distributors so that artists can be compensated.

Wiser likewise is directed at controlling the distribution of content. Wiser discloses a online music distribution system utilizing cryptographic binding associating purchased music with each purchaser. Therein, Wiser discloses concepts such as duplication, portability, recovery, unauthorized access and point-of-sale controls intended to control the distribution of work.

Wiser does not disclose or teach the present invention of at least broadcasting to a plurality of audience members so that the broadcast is remotely receivable simultaneously by the audience members. Furthermore, Wiser does not disclose or teach the step of using data to compensate at least one artist responsible for the content that is broadcast.

In contrast to Wiser and Gitner, the present invention allows, indeed encourages the free distribution of content unfettered by the control mechanisms of Gitner and/or Wiser. The present invention then monitors for broadcasts to identify works within the broadcasts and uses data related to the broadcast to compensate the artists for the performance of content by using the specifically produced cue sheets for submission to the performing rights organizations.

Tracking distribution cannot be used to compensate for performance since one distribution for example a record to a radio station may be used to produce one or several compensatable performances, for example playing the record multiple times. In further contrast, Wiser discloses only control logs produced for distribution and serves only those rights accompanying distribution. The cue sheets of the present invention report performance and provide the basis for compensation of rights different from distribution.

Levine discloses means for improving the detectability of a watermark where lossy compression is an issue. Since lossy compression occurs when media is compressed by losing data as a tradeoff to reducing the file size, it is clear that Levine discloses improving pre-broadcast watermarking. In comparison, the present invention teaches cross-phasing after broadcast, i.e. after the audio signal has been received.

Absent impermissible hindsight an artisan skilled in the relevant art would not be able to combine Gitner, Wiser and Levin to create the present invention. At best the cited reference develop a possible model for a securing the distribution of robust watermarked music files across multiple platforms. However, this is not the present invention of compensating for performance nor for controlling or managing distribution.

Applicant respectfully disagrees that the BMI business template makes the present invention obvious. The art in question is the business of policing the performance of production music to ensure proper cue sheet reporting to performance rights organizations. Therein, BMI does not teach or reasonably disclose feeding a received audio signal into a monitoring means to make an identification and storing and associating the identification with an identification record as a batch file for the purpose of compensating an artist for performance of his content.

Applicant respectfully submits that the best inventions are often the simplest and may in hindsight, using the invention as a roadmap, appear obvious. The present invention has been used for more than 4 years now and has compensated countless artists. The leading performance rights organizations, BMI /ASCAP accept our data produced through the present invention as proof of performance for the purpose of distributing royalty income payments to rights holders such as writers and publishers.

In view of the remarks set forth above, applicant believes the application is in condition for allowance which action is respectfully requested. All dependent claims are allowable for at least the same reasons provided for the allowability of the independent claims from which they depend.

However, if for any reason the Examiner should consider this application not to be in condition for allowance, the Examiner is respectfully requested to telephone the undersigned attorney at the number listed below prior to issuing a further Action.

Any fee due with this paper may be charged on Deposit Account 50-1290.

Respectfully submitted,



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